

CHAPTER 77
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

191—77.1(507A) Certificate of registration. A person shall not establish or maintain a self-insured employee welfare benefit plan which is a multiple employer welfare arrangement (hereinafter MEWA) in this state unless the MEWA obtains and maintains a certificate of registration pursuant to this rule.

This rule is intended to implement Iowa Code section 507A.4.

191—77.2(507A) Application for certificate of registration.

77.2(1) A person wishing to obtain a certificate of registration pursuant to this chapter shall register and submit a plan of operation with the commissioner. This application and plan of operation shall include the following:

a. A business plan including a copy of all contracts or other instruments which the MEWA proposes to make with or sell to its members, a copy of its plan description and the printed matter to be used in the solicitation of members.

b. Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA.

c. A current list of all members of the employer group or association sponsoring the MEWA and a description of the relationship among the employers which serves as the basis for the formation of the association or employer group.

d. A description of the activities of the association or group of employers on behalf of its members other than the sponsorship of the MEWA.

e. Current financial statements of the MEWA which shall include at a minimum balance sheets, income statement, cash flow statement and detailed listing of assets.

f. An actuarial opinion prepared, signed, and dated by a person who is a member of the American Academy of Actuaries which states that appropriate loss and loss adjustment reserves have been established, that adequate premiums are being charged, and that the association is operating in accordance with sound actuarial principles and in conformance with this rule.

g. A statement from an authorized representative of the applicant which certifies all of the following:

(1) The MEWA is administered by an authorized insurer or an authorized third-party administrator.

(2) The MEWA has been in existence and has provided health benefits for at least five years prior to July 1, 1997.

(3) The MEWA was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least ten continuous years prior to July 1, 1997.

(4) The association or group of employers sponsoring the MEWA is engaged in substantial activity for its members other than sponsorship of an employer welfare benefit plan.

(5) The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

h. A certificate from the applicant that, to the best of its knowledge and belief, the MEWA is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

i. A copy of the indemnity agreement jointly and severally binding the MEWA and each member thereof to meet the covered obligations of each member in a form approved by the commissioner.

j. A copy of the most recent Form M-1 filed by the MEWA with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

k. Any additional information requested by the commissioner.

77.2(2) The commissioner shall examine the application and supporting documents submitted by the applicant and shall have the power to conduct any investigation which the commissioner may deem necessary and to examine under oath any persons interested in or connected with the MEWA.

77.2(3) Within a reasonable time, the commissioner shall issue to the MEWA a certificate upon finding that the applicant MEWA has met all requirements, or the commissioner shall notify the applicant setting forth reasons for a denial upon finding that the applicant MEWA does not meet all the requirements. An unsuccessful applicant may file a new application for certificate of registration at any time.

77.2(4) Modifications to the plan of operation including but not limited to amendments to articles of incorporation and bylaws shall be submitted for prior approval to the commissioner.

This rule is intended to implement Iowa Code section 507A.4.

191—77.3(507A) Financial requirements.

77.3(1) *Surplus.*

a. Unless otherwise provided below or pursuant to the discretion of the commissioner, each MEWA shall deposit with an organization or trustee meeting the requirements of 191—32.4(508) cash, securities or any combination of these that is acceptable in the amount set forth below. In addition to the requirements set forth below, the commissioner may increase the amount required to be deposited based on the commissioner's written determination that such an increase is necessary to adequately secure any potential liability of the MEWA to its enrollees.

b. The surplus requirement for a MEWA shall be the greater of:

- (1) \$500,000; or
- (2) An amount equal to 10 percent of the written premium as of the previous December 31.

77.3(2) *Reserves and stop-loss coverage.*

a. MEWAs shall have at all times aggregate excess stop-loss coverage providing the MEWA with coverage with an attachment point which is not greater than 120 percent of actuarially projected losses on a calendar-year basis.

b. MEWAs shall establish and maintain specific stop-loss coverage providing the MEWA with coverage with an attachment point which is not greater than 5 percent of annual expected claims for purposes of this subrule and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subrule as determined by sound actuarial principles.

c. MEWAs shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles.

d. Premiums shall be set to fund at least 100 percent of the MEWA's actuarially projected losses plus all other costs of the MEWA.

e. All coverage obtained pursuant to this subrule shall contain a provision allowing for at least 90 days' notice to the commissioner upon cancellation or nonrenewal of the contract.

f. No contract or policy of per occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under this subrule, unless such contract or policy is issued by a company that is:

- (1) Licensed to transact business in this state; or
- (2) Authorized to do business in Iowa as an accredited reinsurer.

77.3(3) *Filing requirements.* The following reports shall be filed with the commissioner.

a. *Annual report.* A MEWA shall annually, on or before the first day of March, file with the commissioner of insurance a report which has been verified by at least two of its principal officers and which covers the preceding calendar year. The report shall be on the form designated by the commissioner. The report shall be completed using statutory accounting practices and shall include information required by the commissioner. The commissioner may request additional reports and information from a MEWA as deemed necessary.

b. Independent actuarial report. A MEWA shall annually, on or before the first day of March, file with the commissioner of insurance an independent actuarial opinion prepared in conformance with this rule. The commissioner may conduct an independent actuarial review of a MEWA in addition to the actuarial opinion required by this rule. The cost of any actuarial review shall be paid by the MEWA.

c. Certificate of compliance. A MEWA shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate official representing the MEWA and shall certify the following:

(1) That the plan meets the requirements of this rule and the applicable provisions of the Iowa statutes and regulations;

(2) That an independent actuarial opinion has been attached to the certificate which attests to the adequacy of reserves, rates, and the financial condition of the plan. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and other financial condition of the plan, a test of the prior year's claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American Academy of Actuaries;

(3) That a written complaint procedure has been implemented. The certificate shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints in the prior calendar year; and

(4) That the MEWA has contracted with an insurer authorized to do business in this state or with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

This rule is intended to implement Iowa Code section 507A.4.

191—77.4(507A) Policy or contract. All contracts issued by a MEWA shall comply with the following within 12 months of March 28, 2001:

77.4(1) Notice to purchasers. Every MEWA application for insurance and every policy and certificate issued by a MEWA shall contain in ten-point type on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a multiple employer welfare association (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your MEWA.

77.4(2) MEWAs must offer on a guarantee-issue basis health benefits to all individuals who qualify as members or enrollees of the association.

77.4(3) MEWAs shall become members of the Iowa Individual Health Benefit Reinsurance Association established under Iowa Code section 513C.10.

77.4(4) MEWAs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A MEWA that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

77.4(5) All contracts or policies issued by a MEWA shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996, including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

This rule is intended to implement Iowa Code section 507A.4.

191—77.5(507A) Assessments.

77.5(1) The following disclosure shall be made to each employer member of the MEWA: The benefits and coverages described herein are provided through a self-insured trust fund established and funded in full or in part by a group of employers. It is not a licensed insurance company and it is not protected by a guaranty fund in the event of insolvency. Participating employers are jointly and severally liable for any losses incurred or as determined by the trust or as directed by the division.

77.5(2) If at any time the surplus of the trust is below that which is required by law, the fund shall file with the division a plan to assess all employers within 15 days of such determination to bring the MEWA into compliance with this rule. The assessment shall take place no later than 45 days after the filing of the plan.

77.5(3) In the event that any member fails to pay the member's assessment, the other members shall be assessed within 60 days of the original assessment to bring the MEWA into compliance with this rule.

This rule is intended to implement Iowa Code section 507A.4.

191—77.6(507A) Filing fee. A filing fee of \$100 shall accompany each application for registration as a multiple employer welfare MEWA.

This rule is intended to implement Iowa Code section 507A.4.

191—77.7(507A) Agreements and management contracts. Any agreement between the MEWA and any administrator, service company, or other entity shall be made available for review in the office of the commissioner upon request by the commissioner.

This rule is intended to implement Iowa Code section 507A.4.

191—77.8(507A) Examination.

77.8(1) Each MEWA shall be subject to examination by the commissioner in accordance with Iowa Code chapter 507. Chapter 507 shall govern all aspects of the examination.

77.8(2) The commissioner may make an examination of a MEWA as often as the commissioner considers it necessary, but not less frequently than once every five years. The expenses of the examination shall be assessed against the MEWA being examined in a manner in which expenses of examinations are assessed against an insurance company under Iowa Code chapter 507.

This rule is intended to implement Iowa Code section 507A.4.

191—77.9(507A) Trade practices. MEWAs are subject to applicable provisions of the unfair trade practices Act, Iowa Code chapter 507B.

This rule is intended to implement Iowa Code section 507A.4.

191—77.10(507A) Insolvency. The provisions of Iowa Code chapter 507C shall apply to MEWAs which shall be considered insurers for purposes of that chapter. However, a MEWA shall not be subject to Iowa Code chapter 508C.

This rule is intended to implement Iowa Code section 507A.4.

191—77.11(507A) Suspension or revocation of certificate. The commissioner may sanction a MEWA or suspend or revoke any certificate issued to a MEWA upon any of the following grounds:

1. Failure to comply with any provision of these rules or any applicable provision of the Iowa Code;
2. Failure to comply with any lawful order of the commissioner;
3. Failure to promptly pay lawful benefit claims;

4. Committing an unfair or deceptive act or practice;
5. Deterioration of financial condition adversely affecting the MEWA's ability to pay claims;
6. A finding that the application or any necessary forms that have been filed with the division contain fraudulent information or omissions;
7. A finding that the MEWA or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a member, a participant, or a person otherwise entitled thereto and that have been entrusted to the MEWA or its administrator in its fiduciary capacity;
8. Failure to remit the proper amount of premium tax in a timely manner, as required by Iowa Code section 432.1.

This rule is intended to implement Iowa Code section 507A.4.

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CHAPTERS 78 and 79
Reserved